Order 2004-3-6
Served: March 9, 2004

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 9th **day of March, 2004**

Essential air service at **MERCED, CALIFORNIA** under 49 U.S.C. 41731 *et seq.*	**Docket OST-1998-3521**

ORDER RESELECTING CARRIER

Summary
By this order, the Department is reselecting Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines (Scenic), to provide essential air service at Merced, California, at an annual subsidy rate of $645,751, for the two-year period April 1, 2004, through March 31, 2006.

Background
By Order 2001-10-9, October 18, 2001, the Department selected Scenic to provide subsidized essential air service (EAS) at Merced, California, through October 31, 2003. Under that order, Scenic operates 14 nonstop round trips a week with 19-seat Beech 1900 aircraft to Las Vegas. First and second-year subsidy rates were set at $949,458 and $749,433.[1] Most recently, by Order 2004-1-9 we requested proposals for EAS at Merced, because our selection of Scenic expired on October 31, 2003. Proposals were due February 17. In response, we only received timely-filed proposals from Scenic, as described below.

Carrier Proposals
Scenic submitted two proposals, both of which would provide 14 nonstop round trips per week with Beech 1900C aircraft to its passenger terminal at North Las Vegas. Under option one, the

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[1] By Order 2002-1-13 the Department increased subsidy rates program-wide after the terrorist attacks of September 11 to reflect increased expenses and decreased revenues, and the carriers' inability to adjust their service due to their contractual obligations under the EAS program. Scenic's revised rates at Merced were $1,031,224 and $844,479.

carrier proposes to provide this level of service for a typical two-year period for $645,751 annual subsidy. Under option two, the carrier would provide the same level of service for a three-year period and would require $611,119 in annual subsidy. The reduced subsidy results from Scenic taking its projected traffic increase in the third year of the rate and spreading it over the entire three-year period.

Decision
Because only one carrier, Scenic, submitted proposals, the community was not faced with a decision between competing carriers. The community did, however, express a preference for Scenic's two-year proposal over its three-year option. Because the typical carrier-selection is for a two-year period, we will honor the community's choice.

We note that the carrier has done an outstanding job at Merced. Its has almost doubled the traffic forecast in its original proposal, from 7,600 projected to 13,018, overcoming the impact of the terrorist attacks of 9/11 on most carriers' traffic results. As a result, the subsidy rate has come down nearly $200,000 from the current rate of $844,479. Scenic's traffic increases and subsidy reductions are among the highest for any subsidized carrier in the aftermath of the terrorist attacks. Scenic's development of Merced is even more remarkable given the nearby competitive service at Fresno to Los Angeles and San Francisco, and the fact that the carrier it replaced, SkyWest, operated as a United Express code-share partner to a United hub, Los Angeles. We note that the carrier has operated to North Las Vegas, where it has its own passenger terminal, since inaugurating service to Merced. It buses connecting passengers to McCarran, the main airport, and provides complimentary snacks and beverages along with free television and internet services at its terminal.

Carrier Fitness
49 U.S.C. 41737(b) and 41738 require that we find an air carrier fit, willing and able to provide reliable service before we compensate it for providing essential air service. We last found Scenic Airlines fit by Order 2004-2-19, February 19, 2004, where we selected it to provide subsidized essential air service at Ely, Nevada. We find that Scenic continues to have available adequate financial and managerial resources to provide quality service at the community at issue here, and that it continues to possess a favorable compliance disposition. The Federal Aviation Administration has advised us that the carrier is conducting its operations in accordance with 14 CFR Part 121, and knows of no reason why we should not find that Scenic remains fit.

This order is issued under authority delegated in 49 CFR 1.56a(f).

ACCORDINGLY,

1. We select Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, to provide essential air service at Merced, California, as described in Appendix B;

2. We set the final rate of compensation for Scenic Airlines, for the provision of essential air service at Merced, California, as described in Appendix B, to be payable as follows: for each month during which essential air service is provided, the amount of compensation shall be

subject to the weekly ceiling, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by $452.52;[2]

3. We direct Scenic Airlines, to retain all books, records, and other source and summary documentation to support claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed, whichever comes first. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;

4. We find that Scenic Airlines, continues to be fit, willing and able to operate as a commuter air carrier and capable of providing reliable essential air service at Merced, California, and;

5. This docket will remain open until further order of the Department; and

6. We will serve copies of this order on the mayor and airport manager of Merced, California, and the California Department of Transportation.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at http://dms.dot.gov

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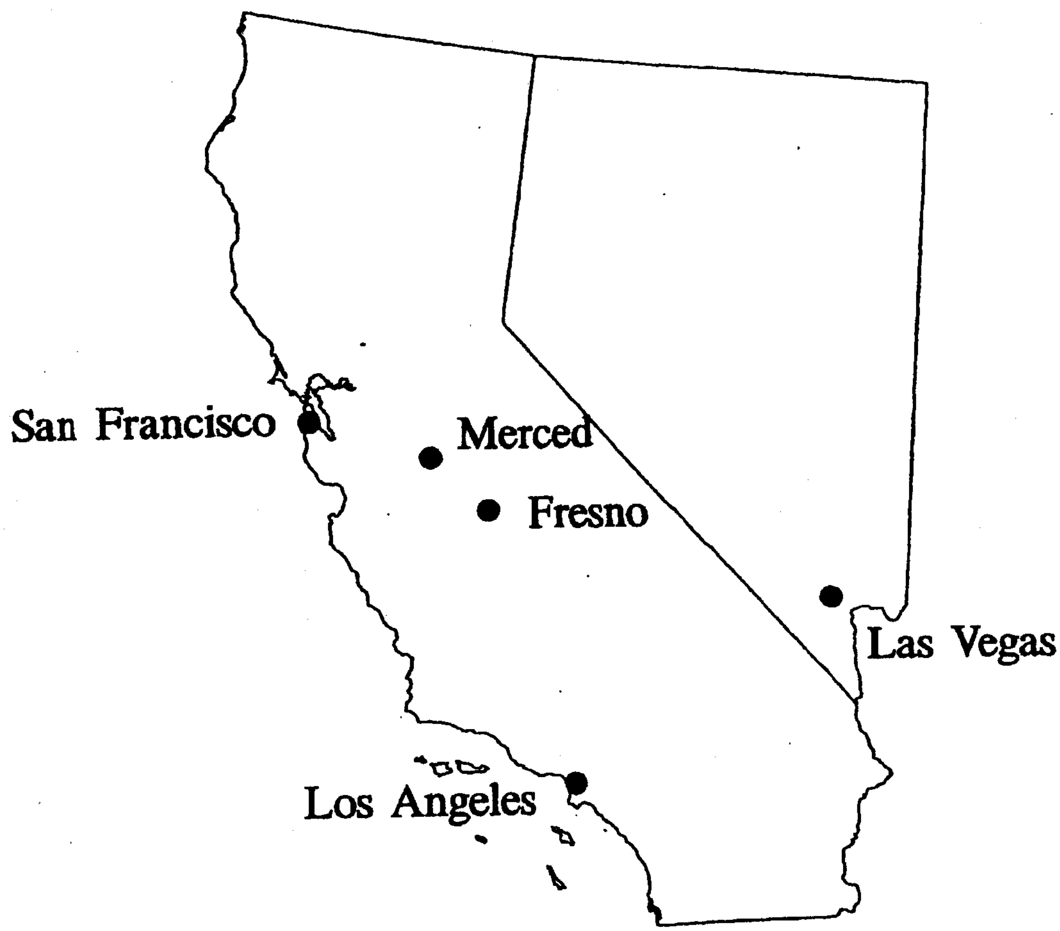
[2] See Appendix B for calculations.

Appendix A



__Mileages__

MCE-SFO	105
MCE-LAX	259
MCE-FAT	55
MCE-LAS	309

Appendix B

Scenic Airlines, Inc., Essential Air Service to be Provided to Merced, California, Docket OST-1998-3521

Effective Period: April 1, 2004, through March 31, 2006.
Scheduled Service:
14 nonstop round trips per week to North Las Vegas.
Aircraft: Beech 1900C
Rate per Las Vegas Flight: $452.52 [1]
Weekly Ceiling at each Community: $12,670.56 [2]

Note: The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plan outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with this order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the agreed amounts or at the agreed service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the parities to the agreement do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

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[1] Annual compensation of $645,751 divided by the estimated annual completed departures and arrivals at a 98 percent completion factor: 28 flights x 52 weeks x .98 = 1,427 total flights.

[2] 28 flights/week x $452.52.